MICHIGAN SUPREME COURT

PUBLIC HEARING
May 16, 2012

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CHIEF JUSTICE YOUNG: Good morning. This is the administrative session and it occurs to me that we've been doing this awhile, but have never I think given a complete explanation of why we're here and why we do this. The Constitution of this state assigns to the Michigan Supreme Court the responsibility to provide rules for the practice and procedures of the courts. As a consequence, the Supreme Court promulgates all the rules for all the state courts and for the canons that are applicable to the lawyers and judges of this state. And as a part of this rulemaking responsibility, we have encouraged the public to advise us of rule changes that they would like to make or to suggest new rules that they think would be propitious. And as a part of that process the Court evaluates the requests and then publishes those it believes worthy of further consideration for public comments. These are all posted on the Court's website. The comments on all of the pending rule changes – proposals – are available. And once the comment period has expired we hold these hearings to hear from members of the public who wish to comment on the various of the pending proposals. And that brings us today. We have seven items, but we have only three of them on which members of the public wish to speak. The process is each member wishing to speak to the proposal has three minutes in which to speak to that proposal. There are no – as far as I'm aware, there are no speakers who have indicated an interest in Items 1, 2, or 3, and there are three, as I understand it, who wish to speak to Item 4 which is file no. 2010-32 concerning Rule 3.210 which was submitted by the Michigan Judges Association to deal with default and default judgment procedures in domestic relations. The first person to speak is James Harrington.

ITEM 4: 2010-32 – MCR 3.210

MR. HARRINGTON: Good morning. Nice to be back. I've been in practice 38 years; I practice in Novi, Michigan. I have been on the Family Law Council for six years. Co-chair of the Court Rules and Ethics Committee for five of those years. We are not the proponents of this proposal, but we have worked very closely with Judge Feeney, Judge Joan Young, and others on a multi-member task force over the last three or four years to bring

this proposal to the Supreme Court's attention. The belief and the underpinnings of the proposed amendments to the default judgment court rule are quite simple, which is that divorce cases are different from civil cases because of custody, parenting time, child support -- equitable issues. In the real world, participants, particularly in pro per participants, are appearing in the courthouses, they are under most circumstances allowed to participate, but the rules are clear – are not clear and I think the rules are somewhat confusing as to what their rights and remedies are. As this proposal has continued to evolve, the most recent redlined proposal which I believe has been submitted to the Court reflects additional modifications and tweakings arising out of a conference telephone call with representatives of the State Bar, other interested parties, two weeks ago. I would like to comment just on a couple of the redlined proposals which are in my copy and I presume yours which those are the last tweaks to the proposed court rule. The first one on ¶B(c) simply states what a default means. It means that the party has the right in a divorce case to create, proceed, and file a motion and obtain a judgment of divorce. There is a typo in ¶2 – there's two b's there it should be a, b, c. On the next page, and this came out of our last conference call – (e) makes clear that that the court may determine the extent to which a defaulted party in pro per or otherwise may participate in the proceedings. And the cross-out which again came from the last conference call – trial is crossed-out simply because it duplicates what it says earlier in the proposal which is that the party may participate in all scheduled court proceedings. So that is not meant to say you can't participate in trial if the court permits. And why in family law cases would we do that, because the children are at stake, child support issues are at stake, spousal support issues are at stake, and at default hearings the judges need to be able to obtain information from a party in default in order to do equity and in order to enter a proper judgment or the court may order the parties to friend of the court hearings. The parties are being allowed or should be allowed to participate in friend of the court hearings and not shut-out of the process. The final comment – and this was actually in the proposal for a couple of years – there was some thought that the court should on default hearings perhaps be able to consider evidence not otherwise admissible. The court will consider evidence at the trial court level what it chooses to accept and carving out an exception for not otherwise admissible – there was a concern that opens the gate too much to perhaps impermissible evidence –

JUSTICE MARILYN KELLY: So you've removed that, is that right?

MR. HARRINGTON: That has been removed; that has been removed and by consensus. We are from my perspective as of the last conference call –

CHIEF JUSTICE YOUNG: Excuse me. Can you conclude your remarks please, you've –

MR. HARRINGTON: I'm sorry?

CHIEF JUSTICE YOUNG: Your time is up; would you conclude your remarks.

MR. HARRINGTON: I will. We are almost there. I think we need a little more time to do some final tweaking. We've received some specific comments from Judge Elwood Brown which go to the heart of this and I think his concerns should be addressed. So we would request that we be able to continue to work and finalize a consensus version of this court rule. Thank you.

CHIEF JUSTICE YOUNG: Thank you. The next speaker is Honorable Kathleen Feeney.

JUDGE FEENEY: Mr. Chief Justice, Justices of the Supreme Court, I stand before you as a humble trial judge from the Kent County Circuit Court. I operate in the family division of that court. This administrative file has been three to four years in the making – this is a second effort to address the concerns that trial courts face when litigants in domestic relations cases are defaulted. My esteem colleagues and I are gonna do our best to try to give you the big picture, the details in the law. Mr. Harrington has also – or he talked about the details. I want to give you a little bit of a big picture, and then Mr. Ryan who – he and Mr. McCollough (phonetic) drafted the monograph I believe you have – I will be talking about that. Why do we need a specific rule to handle defaults and default judgments in domestic relations cases, because we are charged with addressing the need to determine the best interests of children, the equitable division of property, appropriate child support, appropriate parenting time, and appropriate spouse support, and we often cannot make those factual findings without information or input from both parties. As a general rule, domestic relations complaints do not address the factors or contain prayers for relief addressing each and every provision

but has to be contained in a proposed judgment. No one party has all the information we need. A one-sided presentation may be inconsistent with the best interests of the child, and in the domestic relations arena the parties are disproportionately unrepresented and without sufficient evidence we cannot merely say I can't make a decision with respect to custody. We need a separate rule to address these critical differences between domestic relations cases and perhaps contracts or tort cases. The current rules offer little guidance as to how trial courts should make these required findings once a default has been entered. As a result, most defaults are set aside pursuant to the court rules. I sign two or three such stipulations – counsel - just last week. As you know the defaulted party cannot proceed with the action until the default is set aside, but how much do you – how do you enter a child support order for the defaulted husband who owns his own employment, his own business, and his wife, the plaintiff, has no idea how much income he makes. He has to respond to discovery or provide testimony at cross-examination at trial. Also what's a meritorious defense to a divorce or a child custody proceeding. Do you need to assert in an affidavit that the parties were never married or perhaps the child is not a child of the marriage? *Koy v Koy*, a Michigan Court of Appeals case, found at 274 Mich App 653 – jump cite to 660 – it's a 2007 case. It clearly states that despite the entry of a default judgment courts must make factual findings on all relevant factors where the default is not set aside. By way of example, I want to briefly tell you about a challenging case I had in dealing with the default rules. I did not set aside a default in a case where the husband refused to attend the settlement conference. He instead left 17 ranting messages on my clerk's voice mail stating that he feared his wife would assault him court and alleged that she was abusing her daughter. You can find this case in a Court of Appeals unpublished decision of *Hunt v Hunt*, Docket No. 285266, it was issued on March 17, 2009. Mr. Hunt objected to the proposed default judgment that Ms. Hunt had sent to him, as a result we had a multi-day trial. I swore in both parties and after the plaintiff presented her proofs and testified I inquired of both parties regarding 12 best interest factors, 9 additional parenting time factors, 14 spousal support factors, 10 property division factors, and 11 income factors in determining child support. I received documents that they submitted in response to my questioning without CPS workers, doctors, record custodians, or police officers present to testify to the authenticity of these documents or who could be cross-examined. I made the necessary factual findings on all the

factors in my bench opinion, and the Court of Appeals affirmed me on all counts.

CHIEF JUSTICE YOUNG: Doesn't that undermine the necessity for the rule change then?

JUDGE FEENEY: Yes, that's why I'm here today because we continue to have these issues, and the court rule just doesn't fit. It's like putting a square peg in a round hole.

CHIEF JUSTICE YOUNG: Well, but my point is you entered a default and yet the spouse who'd been defaulted was present and you were able to make all the necessary findings, right?

JUDGE FEENEY: Yes, but under the court rules if you look at it the defaulted party should not be able to proceed. But I interpreted the current rules to say, okay, he cannot object to her presentation of the CPS report showing that he was making unfounded allegations against her. The doctor's report showing that he was taking pictures of the little girl's body with little post-it notes on it showing here she had little marks that he thought these were razor marks and he thought these were poke marks. Otherwise, that's all hearsay evidence. I interpreted the rule to say he can't participate and so he can't object to that. But there's so many different courts – there's so many different judges – who have to interpret these same rules that there needs to be clarity, there needs to be advice and some kind of guidance in the court rules. We live by these rules and we die by these rules, and we're just trying to give clarity to everyone so we're all operating whether you go to Kent County, to Wayne County, up to St. Clair, wherever you go.

CHIEF JUSTICE YOUNG: Okay. Would you conclude your remarks, please?

JUDGE FEENEY: Very good. You'll have to give me a second; I'll have to jump through my notes.

CHIEF JUSTICE YOUNG: Sure.

JUDGE FEENEY: We've already touched on some of the deletions. I believe that – In short, we believe there'd be no benefit to a moving party – Judge Brown did – if we permit the defaulted party to participate in the proceedings.

JUSTICE MARY BETH KELLY: Judge Feeney can I just ask one question to wrap it up.

JUDGE FEENEY: Go ahead. Yes, Ma'am.

JUSTICE MARY BETH KELLY: You indicate this committee has been three to four years in the making and we just heard from Mr. Harrington that you "need more time." How soon could this be wrapped up?

JUDGE FEENEY: I believe within the next month or so. We finally got the comments on pretty much the last day of the comment period. And once that happened our work groups came together. We had the phone conference and talked to the other stakeholders – the State Bar Committee, the Domestic Relations Committee, the Civil Procedure Committee, and Judge Elwood. And we've had discussions going on. We're very close. The other committees just haven't had a chance to take the proposed revisions back to their own committees and have them all vote on it. So –

CHIEF JUSTICE YOUNG: It's like this is premature then at this point.

JUDGE FEENEY: Slightly because as I said this is the first time we've heard the comments with respect to the new proposal that was really well thought out. Workgroups in different parts of the state and then Mr. Capps was kind enough to organize a major workgroup I think a year and a half ago where we could all come together with judges, friend of the court referees, Mr. Harrington. I believe Mr. Ryan and Mr. McCollough participated. So we're just about there, but we do need just a little bit more time.

CHIEF JUSTICE YOUNG: Thank you very much.

JUDGE FEENEY: Thank you so much. I appreciate the opportunity.

CHIEF JUSTICE YOUNG: James Ryan.

MR. RYAN: Good morning everyone. This is my first trip here and I'm quite nervous, but we used to be here –

CHIEF JUSTICE YOUNG: Don't be, we're friendly.

MR. RYAN: I won't be taken out in stocks or anything.

CHIEF JUSTICE YOUNG: No, we've got rid of the stocks a few weeks ago.

MR. RYAN: I've been practicing 35 years; I'm a past-chair of the Family Law Section and I was one of the attorneys – nonjudge attorneys brought into the judges' workgroup committee that was working on this proposal. And I submitted to them a – I co-authored a 52-page monograph about entry of defaults, removal, setting aside default judgments, entry of judgments and setting those aside, to give everybody an idea of what I think the law in Michigan is. I stand here, like Mr. Harrington did, to support the judges' efforts to make this clear. It took forever to do that research to find out what the actual law is. There are seven different procedural types of defaults that get entered in cases, including family law cases, but it's so important because family law – and this will apply to more than divorces – but family law is like 40% of the civil docket in this state. And we have an awful lot of in pro per people out there that don't know they need to file appearances or written answers and things like that. And even if they – and when they don't, the judges are unclear as to their participatory rights in all the hearings to determine what the appropriate relief is. And that's all a plaintiff in an equity case is entitled to is appropriate relief. The judges need tools to find out what the facts are so that they can fashion that relief. This rule is an attempt to set it out step-by-step kind of like a checklist for the parties and the court to use to determine the participatory rights. Court rule 2.603 says a defaulted party may not proceed, but proceed with the action is not defined – not very well in the cases either. They've admitted facts, they've admitted liability, they can't file a counterclaim, but they're allowed to participate. In civil cases they participate in jury trials to set damages and everything. There should be some way to control that participation in the family case so that they can't show up, lay in wait, show up in trial court on the day of trial as a defaulted defendant with 15 witnesses and 5 boxes of documents. There's got to be some clarity to all of it. I think the *Perry v Perry* decision was properly decided in 1989, but the *Dragu* (phonetic) decision that followed in 1997 that tried to eviscerate *Perry* was improperly decided – it went too far. I would like this Court to – when reviewing the proposed rule, to rely more appropriately on *Perry v Perry* from 1989, and I've probably run out of my time.

CHIEF JUSTICE YOUNG: You have. Would you like to make a concluding remark?

MR. RYAN: That was my concluding remark. I ran out of time –

CHIEF JUSTICE YOUNG: Thank you very much for your time then. Thank you.

MR. RYAN: Thank you.

CHIEF JUSTICE YOUNG: The next item is Item 5 which is – concerns court rule 3.220 and is numbered 2010-33, concerning whether a trial judge should set a deadline for arbitration proceedings and approve extensions. The only person listed to speak on this matter is Mr. Harrington.

ITEM 5: 2010-33 – MCR 3.220

MR. HARRINGTON: Thank you your honor. Besides being on Council, I'm also a domestic relations arbitrator. And from the boots on the ground perspective of an arbitrator in divorce cases, I will tell you the statute is a great statute. The arbitration system in divorce cases works. It takes cases off the judges' docket. We agree – we being Council and myself individually, agree with that aspect of the court rule setting deadlines. There have to be deadlines set – reasonable deadlines. Council has no problem with that; I have no problem with that. As an individual practitioner regarding interim arbitration awards, I issue interim arbitration awards all the time. I don't just wait to deal with the arbitration case. And I think the procedure here where the arbitrator submits a proposed order for entry by the court and its given immediate affect, I as an individual practitioner think that's a great provision of the court rule – the proposed court rule. Where I have a problem with the court rule is the – and Council has the same problem – is that the statute, 600.5079, puts the statutory burden on the plaintiff to submit a proposed judgment in accord with the arbitrator's ruling. That's the way it should be. And if the plaintiff doesn't do it then the defendant attorney has to do it. This proposed court rule will generate tremendous problems for arbitrators and for the courts because it vests the arbitrator with the obligation to prepare a proposed judgment. As a matter of statute, the arbitrator can only make determinations on issues that are submitted to arbitration under the arbitration agreement, that's Michigan statute 600.5074. If an arbitrator has been ordered by the court to determine property and he makes property rulings and the parties don't submit a proposed judgment to the court, the arbitrator has to submit a judgment and the judgment must contain child custody

provisions, parenting time provisions, spousal or child support provisions, none of which may have been put on the desk and within the realm of the authority of the arbitrator. That is extremely problematic for the arbitrator. It is a major problem for the arbitrator. So that is the major problem that Council has and that I have with the proposed court rule. This court rule came out on a very fast track, it was December 21 I think when it was proposed, and the comment period was relatively short. And I do believe there should be input from other interested entities like the Michigan Judges Association, like members of the Alternative Dispute Resolution Committee, and it is my belief that this is premature for consideration by this Court.

CHIEF JUSTICE YOUNG: In what sense – this had the regular comment period.

MR. HARRINGTON: It did; it did. And there weren't a whole lot of comments.

CHIEF JUSTICE YOUNG: There were six.

MR. HARRINGTON: Yes, that's correct.

CHIEF JUSTICE YOUNG: And what are to make of the fact that people – this doesn't excite a lot of people besides you.

MR. HARRINGTON: I think you can make that either no one objects – that's a reasonable inference – or you may also infer that perhaps a lot of people didn't know this was out there. I don't know.

CHIEF JUSTICE YOUNG: Well, there actually was quite a bit of negative comment on it that it was –

MR. HARRINGTON: That is true.

CHIEF JUSTICE YOUNG: deleterious to the whole notion of arbitration to solve – resolve domestic relations issues – that it would be harmful to that process.

MR. HARRINGTON: It could be if it gets – and, in fact –

CHIEF JUSTICE YOUNG: Beyond – beyond – that there are others who said that deadlines were anathema – the court assigning deadlines was an anathema. Interim orders was –

there's no providence for interim orders. Those are the kinds of negative comments in the file.

MR. HARRINGTON: That is true, and I believe that the positive aspects of – and Council believes and I believe that a court obviously should have power to control the length of the arbitration process and we (inaudible) on the court docket. I have a case now –

CHIEF JUSTICE YOUNG: I mean do we need a rule that says the court has an inherent power to say I want this concluded within six months?

MR. HARRINGTON: We do not oppose this proposal. If the proposal itself went down and never was adopted –

CHIEF JUSTICE YOUNG: But I'm asking the question – it goes to whether we need a rule at all. If deadlines were the issue, doesn't the court – trial court have inherent power to say I'm gonna see to the parties' wish to have arbitration, but it's gonna be concluded within X period.

MR. HARRINGTON: You're absolutely correct.

CHIEF JUSTICE YOUNG: So we don't a rule -

MR. HARRINGTON: I don't think we need that rule.

CHIEF JUSTICE YOUNG: Okay.

MR. HARRINGTON: But I don't think that rule is harmful to remind the court as to what they may be doing, and I think there are situations when a case is out in arbitration where the court may feel what power do I have. I think the court does, and I know the court does have the power to do that, but there may be uncertainty as to what's this arbitrator doing with this case that's been out here for two years, which does happen.

CHIEF JUSTICE YOUNG: Yes, and you think the court is powerless to inquire –

MR. HARRINGTON: No, I do not.

CHIEF JUSTICE YOUNG: Oh, okay.

MR. HARRINGTON: I do not.

CHIEF JUSTICE YOUNG: Thank you. Any other questions?

MR. HARRINGTON: Thank you.

CHIEF JUSTICE YOUNG: Thank you very much. Mr. Harrington being the only endorsed speaker on Item 5, we know turn to Item 6 which is – concerns several rules – to alter the nature of appeals from the probate court as between the Court of Appeals and the circuit court. There are three speakers. Liisa Speaker being the first – a (inaudible) named speaker.

ITEM 6: 2011-30 – APPEALS FROM PROBATE COURT

MS. SPEAKER: Good morning your honors. Liisa Speaker; I'm hearing on behalf of the Appellate Practice Section of which I am currently the Chair, and I've submitted a lengthy comment with proposed changes to ADM 2011-31. And these changes, as my letter reflects, came about after working with the other stakeholders who had been involved with ADM 2011-31. Unfortunately, we were – I think inadvertently were not brought into the process in preparation for the proposal that turned out to be ADM 2011-31 so that we kind of came into the process after the fact. But we have worked with the other stakeholders, and we are very hopeful that all of the stakeholders will approve the revisions that I have set forth in my letter, and I believe the other speakers this morning – Marlaine Teahan and Judge Murkowski – will be able to speak to a couple of updates on that regard.

CHIEF JUSTICE YOUNG: Can you speak to the one that seems at least to me the most concerning is that this proposal trenches upon the legislative prerogative to define by law the jurisdiction of the Court of Appeals.

MS. SPEAKER: Yes, your honor. That was one of the things that our group addressed specifically that there were concerns about jurisdictional issues, and I know members of the Appellate Practice Section Council raised similar but not the same concerns that were raised in Mr. Falk's letter to this Court in his comment. We did an exhaustive search of statute and case law and the Michigan Constitution, and there are many provisions in those places that allow this Court – not just by law – but allows this Court to promulgate rules regarding the jurisdiction of the circuit court and the Court of Appeals. And to the extent –

CHIEF JUSTICE YOUNG: Did you supply those?

MS. SPEAKER: Pardon?

CHIEF JUSTICE YOUNG: I thought you did – you mentioned but did not supply –

MS. SPEAKER: No, I did not supply them in my letter.

CHIEF JUSTICE YOUNG: That makes it very difficult to understand how accurate your assessment is, doesn't it?

MS. SPEAKER: Well, I do have information about it and if you would like for us – maybe as a workgroup – we could together supply you some more information about that. But for –

CHIEF JUSTICE YOUNG: Are you requesting that we delay consideration of this?

MS. SPEAKER: I wasn't requesting that, but I do believe the Probate Section was going to request an extension on the comment period only because there are two stakeholders that I know of for sure that haven't had a chance to meet and vote on the changes to ADM 2011-31. But going back directly to your question Justice Young, to the extent that there are specific statutes which say there is an appeal to the circuit court from a probate order which is in the context of the Drain Code and the Public Health Code, we have added in a carve-out – what I call a carve-out - in 5.801(a) so that those appeals are not directed to the Court of Appeals like all the other appeals of probate court orders. For every other type of appeal that – well really the – everything is already going to the Court of Appeals. All the appeals from estates and trust issues except the new – the change from this ADM and the revisions is that guardianship appeals and involuntary commitment appeals which were previously sent to the circuit court on appeal are now being directed to the Court of Appeals. And we did do the research on that to confirm that there was 1) no specific statute that required a guardianship appeal to go to the circuit court, and 2) there are multiple statutes in the Constitution and court rules that allow this Court to promulgate rules regarding the jurisdiction.

CHIEF JUSTICE YOUNG: It seems to me that that legal predicate would be essential to us being able to determine whether this is an unconstitutional proposal or not. So I guess my question again to you is are you not requesting additional time to provide that information to other stakeholders and

ultimately to the Court before we decide what to do with this file?

MS. SPEAKER: Well, I know the Probate Section is going to be requesting more time, and we're happy to – if more time is granted, we're happy to provide more information to the Court.

CHIEF JUSTICE YOUNG: I'm asking - don't you want more time?

MS. SPEAKER: Sure. Thank you your honor.

CHIEF JUSTICE YOUNG: Thank you. The next speaker is Marlaine Teahan.

MS. TEAHAN: Mr. Chief Justice, Justices of the Supreme Court. Good morning. My name is Marlaine Teahan and I'm here as a representative of the Probate Council. And I'm not quite sure I even need to get up to speak after what just transpired –

CHIEF JUSTICE YOUNG: Are you desiring that the Court make a determination immediately or do you want more time?

MS. TEAHAN: I think that more time is necessary for two reasons. One is because this was a joint submission and as Ms. Speaker indicated I really wish that we had brought in the Appellate Practice Section from the beginning, but that was really my oversight and I apologize. But I would like the Michigan Judges Association and the Rules Committee of the Court of Appeals time to review the Appellate Practice Section's comment, and I would like to also point out that the Probate Section has public policy positions on the State Bar website concerning what I'm speaking about today. But there are stakeholders that have not considered the substance of the Appellate Practice Section's comments, and I think we need an extension of time for that purpose, and but probably more importantly for the jurisdictional issues. I would like to fully brief that for you and –

CHIEF JUSTICE YOUNG: How much more time? Given that all the interested parties haven't been apprised of this, how much time is reasonable?

MS. TEAHAN: I think the best amount of time would be sometime in September, and the reason for that is the judicial associations meet, as I understand, on a quarterly basis. So I

believe they meet in the summer and so if we could have an extension until sometime in September I think we could –

CHIEF JUSTICE YOUNG: And you will address the jurisdictional questions?

MS. TEAHAN: Absolutely.

CHIEF JUSTICE YOUNG: Thank you very much. Any other questions?

MS. TEAHAN: Thank you. Judge could I on a personal note – I was here about six weeks ago on the *Mortimore Estate* with Boy Scout Troop 645, and I left a thank you note signed by all the boys. They were just so wowed by being here and they were amazed that you would recognize them and have them introduced. And it was a real impactful experience, and Ms. Boomer and the attorneys involved also spent time with the boys afterwards and it was just a great experience.

CHIEF JUSTICE YOUNG: They're better behaved than most.

MS. TEAHAN: Yeah, I was impressed. I had two sons there so I was trembling.

CHIEF JUSTICE YOUNG: Oh, good.

MS. TEAHAN: Thank you.

CHIEF JUSTICE YOUNG: Thank you. Judge Murkowski. Very snappy tie, judge.

JUDGE MURKOWSKI: Thank you. Good morning Chief Justice Young and Justices of the Supreme Court. My name is David Murkowski; I'm the Chief Judge of Kent County Probate Court. I serve on the board of directors of the Michigan Probate Judges Association and on the Probate Estate Planning Council of the State Bar. Yes, we should get a little more time to have all of the stakeholders address the issues. Yes, I believe – I think this needs – I may have started this two years ago in a broad brush of why we wanted to address this and this was simply a number of reasons including good firm/bad firm/small firm/large firm talented people as the Court of Appeals and perhaps the Supreme Court finds appeals simply misfiled because of the labyrinth of old statutes where probate courts only entertained testamentary trusts and the circuit court handled *inter vivos* trusts. And as we've developed from the Revised Probate Court

to EPIC in 2000 now to the Michigan Trust Code from 2010, we thought that it needed to be addressed. Plus, with concurrent jurisdiction now perhaps we have colleagues who are now standing as an entity of appellate review when they're down the hall from other trial judges. Third, was simply the Court of Appeals had the ability to absorb because of docket numbers to absorb the appeals that were being directed to circuit court and circuit courts who receive appeals which is like receiving a gift from or a package from the Unabomber they really don't want those appeals from – in circuit court. And then we have this bifurcation of a single case that involved perhaps, which has been previously mentioned, a guardianship and a conservatorship case of a single individual where the conservatorship case would go to the Court of Appeals and the guardianship case would go to circuit court. So those are the identified reasons why we approached the Court to become more efficient and user friendly.

CHIEF JUSTICE YOUNG: It strikes me that there's a lot of solicitous reasons to make it clear where these probate appeals go. I want to suggest to the extent that you find that there is a substantial jurisdictional question, perhaps this is one of those kind of corrective actions that might not be so hard to get the – our colleagues across the mall there to fix by statute to make it clear. And we might easily be able to have some assistance in moving that through the Legislature. That is if the jurisdictional question proves to be insoluble.

JUDGE MURKOWSKI: I think certainly that's possible given the picture that the Court of Appeals and Michigan Judges Association and Michigan Probate Judges, Appellate Practice Section, and the Probate Estate Planning Council – and we reviewed that question early – legislative/Supreme Court – and as we've reviewed it and as you will receive the documents such things as §1305 in EPIC simply says the Supreme Court has the authority to direct any appellate issue out of EPIC in probate court period. And other laws that talk about circuit court jurisdiction –

CHIEF JUSTICE YOUNG: I don't – I don't mean to predetermine what the jurisdictional issue is, but it's arisen and we haven't really received a lot of assistance from the proponents on that question.

JUDGE MURKOWSKI: I think that once you do I think that it would be – I think both avenues would simply be available –

CHIEF JUSTICE YOUNG: Okay.

JUDGE MURKOWSKI: to the stakeholders to approach the issue.

CHIEF JUSTICE YOUNG: All right. Any final concluding comment? Thank you very much – appreciate it.

JUDGE MURKOWSKI: Thank you.

CHIEF JUSTICE YOUNG: That concludes the comment section and this hearing. Thank you very much.